



# FOIP FOLIO



## LACK OF OIPC RESOURCES LEADS TO SERVICE CUTBACKS

On February 22, 2010 the Office of the Information and Privacy Commissioner (OIPC) issued the following news release:

### INFORMATION AND PRIVACY COMMISSIONER ANNOUNCES CUTBACKS IN SERVICE DUE TO LACK OF RESOURCES

The Office of the Information and Privacy Commissioner (OIPC) has been denied an additional Investigator position for the third year in a row.

**[Commissioner Gary] Dickson** stated that *"I cannot fulfill my statutory mandate, ensuring that citizens of this province are afforded their information and privacy rights, without adequate resources."*

In the last six years that this office has been operating on a full-time basis, there has been a substantial

increase in public demand for assistance. The number of reviews and complaints is up by 113% over last year, advice to public bodies and health trustees is up 26% over last year, inquiries from individuals, public bodies and trustees is up by 14% over last year. Some citizens have been waiting for more than three years for a resolution to their case file.

**Dickson** stated that *"surging demand for service has overwhelmed the OIPC and it simply cannot be sustained by one of the smallest offices of its kind in Canada (three investigators and a caseload of 376 reviews and investigations)."*

*"The decision of the Board of Internal Economy will diminish accountability of public bodies to the people of Saskatchewan."*

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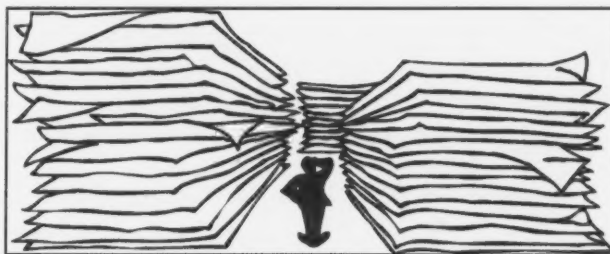
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Effective immediately the OIPC will send a letter to all citizens who request an investigation or review alerting them that they should not expect any action on their file for approximately 12 to 18 months

**Dickson** also stated that his office will be advising all public bodies to expect significant cutbacks and delays in areas including consultation projects

undertaken at the request of the approximately 3,000 bodies that the OIPC oversees including Ministries, Crown corporations, boards, commissions, agencies, schools, regional health authorities, municipalities, universities, colleges and health trustees.

The public can also expect to see an increase in the amount of time it will take for an investigator to respond to them regarding their concerns.



## SK OIPC ISSUES REVIEW REPORT F-2010-001 (Ministry of Health)

On March 17, 2010 the OIPC released Review Report F-2010-001. This dealt with an appeal of an applicant from a series of decisions made by the Ministry of Health (Health) in response to two access to information request. The original fee estimate was more than \$120,000. The applicant appealed to our office. The fee estimate was then reduced to \$1,020 for certain records and \$3,018 for certain electronic documents. Health also extended the time to respond to the request for an additional 30 days. Health relied on seven different exemptions. The applicant

appealed the extension of time, challenged the revised fees estimated by Health and disagreed with the exemptions applied. Commissioner Dickson found both fee estimates to be excessive. He also found that the time extension was not warranted. He also found that of the seven exemptions applied, only two of them could be upheld. The Commissioner recommended the release of all other withheld information. The Report is accessible on our website at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the 'Reports' tab.

## PHYSICIANS WHO OUTSOURCE RECORD STORAGE

The OIPC has received a number of queries from patients after they had received letters from an Ontario document storage company advising that their physician had retired and that their medical records had been moved to Ontario.

Our office has no jurisdiction over an information management services provider but does oversee physicians in respect to their compliance with *The Health Information Protection Act* (HIPA).

To assist physicians in assessing what kind of

outsourcing agreements they should avoid, we produced a set of guidelines: *Advisory for Saskatchewan Physicians and Patients Regarding Out-Sourcing Storage of Patient Records*. This document is accessible at our website, [www.oipc.sk.ca](http://www.oipc.sk.ca) under the 'What's New' tab.

The OIPC reminds all physicians that their obligation for their patient files does not automatically end when they cease to practice in this province. By reason of section 22 of HIPA, the responsibility of each

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physician and, in cases of death, the Executor or Administrator of their estate continues until such time as the patient files are transferred to another trustee in the province or to a designated archive.

There is no problem with a physician contracting with an information management services provider (IMSP)

but the contract must align with the requirements of section 18 of HIPA and it must be clear in the contract that the IMSP provider is not a trustee for purposes of HIPA and that the trustee who contracts with the IMSP remains liable under HIPA for that patient information

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## MINISTRY OF JUSTICE RECEIVES AWARD FOR PUBLICATION

The Access and Privacy Branch, Ministry of Justice recently received two awards for communications excellence for one of its publications; the *Information Management Handbook* (Handbook). This is a handbook for government and local authorities that deal with a range of information management issues including access to information and protection of privacy.

At the ACE (Saskatchewan's Awards for Communications Excellence) Awards last October, the Handbook won an *Award of Merit* in the Communication Skills-Specialty Publications category. The award is given for creativity and the work plan associated with the Handbook.

Shortly after that, the Handbook was awarded a Platinum MarCom Award by the United States-based, Association of Marketing and Communication Professionals. The Platinum Award is given for

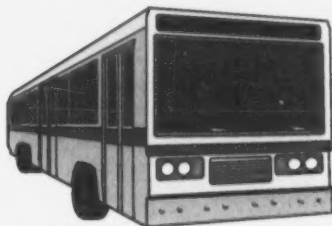
excellence in terms of quality, creativity and resourcefulness.

The Handbook has been a 'best seller' with almost 60,000 hard copies distributed to public sector employees around Saskatchewan. A downloadable pdf version is available at the following link: <http://www.justice.gov.sk.ca/InformationManagementHandbook>.



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## TORONTO TRANSIT SYSTEM EMPLOYS PRIVACY ENHANCING TECHNOLOGY IN ITS NEW CCTV SYSTEM



The Toronto Transit Commission (TTC) is employing a particular video encryption technology as it rolls out video surveillance across the large transit system.

This technology means that when those employees view the screens in real time they can see only a blurred area that effectively disguises the identifying

features of individuals captured by the video picture. When required by police the blurred or scrambled image is converted to identifying features.

In addition, the TTC has adopted key recommendations from the Ontario Information and Privacy Commissioner (IPC) such as limiting the retention of images for only 72 hours and requiring police to provide two signatures on the request form before providing police with access to the identified photos.



## UK PHYSICIANS RAISE CONCERNS ABOUT NATIONAL HEALTH SYSTEM (NHS) DATABASE

A recent article in *The Guardian* (March 7, 2010) discussed concerns raised by the British Medical Association (BMA) about the NHS plan to create an individual summary care record for the 50 million plus people in England. The Chair of the BMA IT

Committee, **Dr. Grant Ingrams**, has expressed concerns that the registration system's reliance on "implied consent" should be replaced by an opt-in system and clearer information for patients about their options.

## AUSTRALIAN HEALTH ID CARD LEGISLATION

In February, 2010 legislation was introduced into the federal Parliament in Australia to enable the issuance of a National Health identifier to facilitate access to medical records. The Australian Medical Association has registered privacy concerns with the new IT system. One criticism of the legislation has been that it



is too vague in terms of what control the patient will have over further uses and disclosures of personal health information. For more information view the March 9, 2010 story [Health ID allows people tracking](http://www.zdnet.com.au) at [www.zdnet.com.au](http://www.zdnet.com.au).

## BC IPC LIMITS THE COLLECTION OF PERSONAL INFORMATION



The BC IPC, by its Order P10-01 under the *Personal Information Protection Act*, required the operator of a restaurant to stop

requiring identification from persons obviously over the age of 19 years. The complainant was over 60 years old and asserted that it was not reasonable that the restaurant require him to produce identification in order to be served alcohol. The Order is available at [www.oipc.bc.ca](http://www.oipc.bc.ca).

## TELEHEALTH LAW

Volume 10, Number 2 (December 2009) of the periodical, *Telehealth Law*, has published an article from the OIPC entitled [Privacy Considerations](#):

[Faxing Personal Information and Personal Health Information](#). This is also available at our website: [www.oipc.sk.ca](http://www.oipc.sk.ca) under the 'Resources' tab.

## CANADIANS WARY OF SOCIAL NETWORKING RISKS

An opinion survey done by Phase 5 Consulting Group Inc. for Natural Resources Canada reveals a surprising lack of trust in social networking sites. Only 6% of respondents trusted the sites. 79% don't trust them at all. Only 26% agreed that Google Street View should be allowed in Canada but 36% said they should not be allowed. More than half of respondents indicated they had experienced a violation of personal

information or privacy. 58% trusted medical institutions to keep their personal information private and secure but only 46% trusted provincial or federal institutions. Only 18% trusted large corporations and 15% trusted small businesses.







## COST OF A DATA BREACH



The Ponemon Institute has released its *2009 Annual Study: Cost of a Data Breach*. It also provides some interesting comparative data since this is the fifth annual study looking at the cost to U.S. based companies of data breaches. The top findings include:

U.S. organizations continue to experience an increased cost of data

breaches. The average per compromised record cost was \$204. The total per-incident costs of data security breaches were \$6.75 million.

Although most U.S. companies still prefer manual and policy solutions as post-breach remediation measures, for the first time, many companies are starting to use enabling prevention and remediation technologies more often and effectively.

Data breaches from malicious attacks and botnets doubled from 2008 to 2009 and cost substantially more than those caused by human negligence or IT system glitches.

The leadership of a CISCO or equivalent position substantially reduces the overall cost of data breaches.

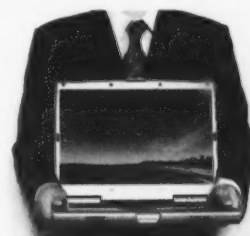
Companies that notify victims too quickly may in fact incur higher costs.

## CLOUD COMPUTING

The Privacy Commissioner of Canada, **Jennifer Stoddart**, has launched public consultations on the privacy implications of cloud computing.

Cloud computing can be defined as the provision of web-based services, located on remote computers, that allow individuals and businesses to use software and hardware managed by third parties. Examples of such services include online file storage, social networking sites, webmail and online business

applications. The Notice of Consultation and the Call for Submissions are available at [www.privcom.gc.ca](http://www.privcom.gc.ca)

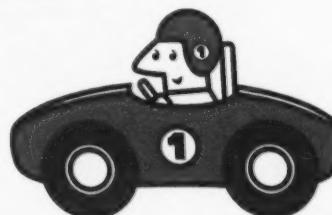


## WHY DID I LOSE MY DRIVER'S LICENCE?



By Order F10-03, **Jay Fedorak**, Adjudicator in the BC IPC dealt with an applicant who requested a copy of an unsolicited letter to the Minister of Public Safety and Solicitor General. This letter related to the applicant's possible health problem that could affect his driving ability. The

Ministry released the letter to the applicant, but severed personal information that would reveal the identity of the letter's author. The BC OIPC upheld the severing. This Order is available at [www.oipc.bc.ca](http://www.oipc.bc.ca).





## NEW FINTRAC MATERIALS

The Privacy Commissioner of Canada has produced a set of Frequently Asked Questions – *PIPEDA and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Question #7 and the answer are particularly relevant to us in Saskatchewan. That exchange is as follows:

7. *Should a health care be used to ascertain a customer's identity?*

*A health card is a sensitive identity document. As such, the information on health cards should only be collected in limited circumstances - such as when necessary or required by law.*

*In a number of provinces there is a stand-alone health information law that prescribes limits on the collection of health service cards and numbers. In some cases, there is an outright prohibition against requiring the production of these cards for any purpose unrelated to the provision of health services. In other cases, health services cards can only be used for meeting the ascertaining identity obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations section 64.1 (a)).*

*The Proceeds of Crime (Money Laundering) and Terrorist Financing Act does not require a health card be photocopied, except in those circumstances where an organization is required to collect or keep a photocopy or copy of an identity document.*

*Given that health cards contain sensitive personal information and their use for identity purposes may be prohibited or limited in certain jurisdictions other identity documents, if available, should be used first to ascertain a customer's identity.*

You can access the rest of the FAQs at the website, [www.privcom.gc.ca](http://www.privcom.gc.ca).

In HIPA, section 13 prohibits a requirement that a person produce a health services number as a condition of receiving any product or service unless this is for the purpose of a health service or where authorized by a Saskatchewan law. Readers can also refer to an earlier discussion of this topic in the Nov/Dec 2009 *FOIP FOLIO*, page 4, archived at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the 'Newsletters' tab.

## BC DATA MATCHING SCHEME DRAWS CRITICISM

The BC Government announced, in its February 9 throne speech, a \$180 million "Integrated Case Management system" that "will deliver better front-line services and supports to women, children, income assistance recipients and those most vulnerable."

The Freedom of Information and Privacy Association (FIPA) based in BC has written **Premier Campbell** warning that the Integrated Case Management system

will have a severe negative effect on both the privacy rights of British Columbians and the public purse.

The concerns will be particularized in a report expected to be released later this spring. The letter from FIPA is available at [http://fipa.bc.ca/library/Letters/FIPA\\_Ltr\\_to\\_Premier\\_Campbell-Feb\\_11\\_10.PDF](http://fipa.bc.ca/library/Letters/FIPA_Ltr_to_Premier_Campbell-Feb_11_10.PDF)

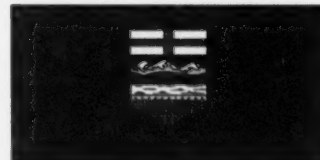




## ALBERTA COMMISSIONER CONSIDERS WHETHER PHYSICIAN PROPERLY HANDLED ACCESS REQUEST

Saskatchewan trustees may be interested in Order P2009-005 (Odyssey Health Services) issued by **Frank Work**, Alberta IPC. This Order is interesting and details what a physician's office should and should not do in meeting its obligations to respond to

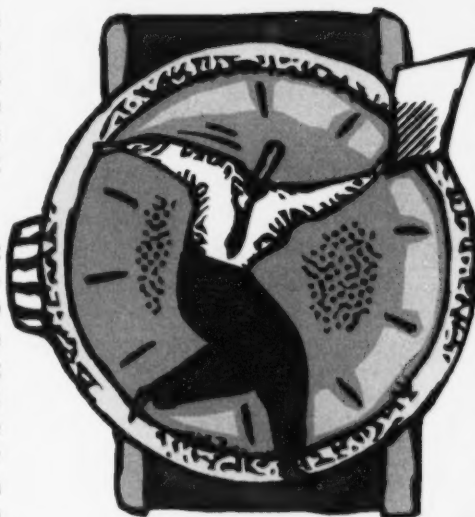
a patient's access request. The Order is available at [www.oipc.ab.ca](http://www.oipc.ab.ca).



## ALBERTA COURT OF APPEAL DECISION IS CONTROVERSIAL

In January, the highest court in Alberta declared that the manner in which the Alberta Commissioner extended the time for his office to complete an inquiry violated that province's FOIP Act.

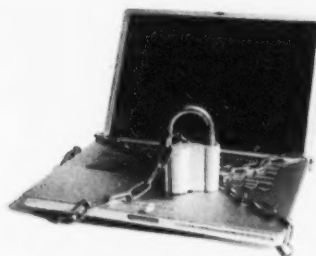
In Alberta the law requires that the Commissioner's office complete an inquiry within 90 days, although the Commissioner can extend that time. The Court of Appeal held (2:1) that the Commissioner cannot routinely extend the time to cope with volume pressure. You can



access the decision in Alberta Teachers' Association v. Alberta (Information and Privacy Commissioner), 2010 ABCA 26.

The Alberta Commissioner issued a news release in which he highlighted the requirement for additional funding and staff if it becomes more difficult to meet the 90 day statutory time limit. The news release of January 29, 2010 - Commissioner Work expresses grave concern over recent Court of Appeal Ruling is accessible at [www.oipc.ab.ca](http://www.oipc.ab.ca).

## THE HUMAN FACTOR IN LAPTOP ENCRYPTION



encryption of laptop computers. Many respondents who are not IT workers in the survey have concluded

Absolute Software undertook a fascinating survey of the perceptions of employees concerning whole disk

that encryption means they don't have to take other precautions. On the other hand, IT workers tend to recognize that in addition to encryption, it is necessary to take additional steps to ensure the data is protected even if the laptop is stolen or otherwise goes missing. The survey results are accessible at [www.absolute.com/resources/public/Whitepaper/ABT-PON-HF-WP-E.pdf](http://www.absolute.com/resources/public/Whitepaper/ABT-PON-HF-WP-E.pdf).



## MARK YOUR CALENDAR!

**Canadian Bar Association** Privacy and Access Law Section meetings in Regina and Saskatoon. To register for any of the following section meetings call CBA at (306) 244-3898



### Saskatoon

- **April 1, 2010:** *Privacy and Access Law Section North*, Saskatoon Club, Saskatoon at 12:00 noon. Topic: "Facebook and other Social Networking Tools—Commercial and Privacy Concerns." Speaker: Steven Seiferling, McDougall Gauley LLP.
- **April 12, 2010:** *Privacy and Access Law Section North*, Saskatoon Club, Saskatoon at 12:00 noon. Topic: "Internet Privacy and Basics of a Privacy Policy." Speaker: Neal Caldwell, McDougall Gauley LLP.

### Regina

- **April 12, 2010:** *Privacy and Access Law Section South*, Hotel Saskatchewan, Regina at 12:00 noon. Topic: "Why do we make access to information about you so difficult?" Speaker: Angela Markel, Portfolio Officer, Office of Information and Privacy Commissioner of Saskatchewan.

**April 19—21, 2010:** *IAPP Global Privacy Summit*, Washington, D.C. For more information, visit [www.privacysummit.org/](http://www.privacysummit.org/)

**June 9—11, 2010:** *2010 Access and Privacy Conference*, Marriott Hotel, River Cree Resort, Edmonton, Alberta. For more information, visit [www3.extension.ualberta.ca/](http://www3.extension.ualberta.ca/accessandprivacy/)



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